IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1626 OF 2007

IN

APPEAL NO. 285 OF 2007

IN

NOTICE OF MOTION NO. 477 OF 2007

IN

SUIT NO. 271 OF 2007

Bandra Eye Institute Pvt. Ltd. .. Appellant

V/s

Dhamo Tikamdas Butani & Anr. .. Respondents

Mr.Venkatesh Dhond with Mr. Yogini Gada i/b Harakchand & Co. for the Appellant.

Mr.G.K. Wadhwa for the Respondents.

CORAM : R.M.S. KHANDEPARKAR &
D.G. KARNIK, JJ.

DATE : 30TH APRIL 2007

P.C. :

1. Heard.

2. The learned counsel for the Appellant states that the Appellant is ready and willing to deposit the amount of Rs.1,46,00,000/-, including the interest

calculated at the rate of 15% per annum on the balance amount for 2 years, in terms of the agreement between the parties. The learned counsel for the Appellant also states that at this stage he merely insists for an interim relief and does not insist for appointment of Court Receiver.

3. Considering the fact that there are rival contentions by both the parties as regards failure to comply with the obligations under the agreement between the parties and the same need to be considered on merits, in our considered opinion, prima facie case is made out for the grant of interim relief in the nature of direction to the Respondents to maintain status quo in relation to the suit property till the disposal of the suit or any order that may be passed in the suit during the pendency thereof. Since the Appellant has ensured to deposit the entire amount in terms of the agreement along with the interest accrued thereon and since the possession of the property, which is subject matter of the agreement, is with the Respondents and the same shall continue to remain with the Respondents, the balance of convenience certainly lies in favour of the Appellant so as to justify the relief in the form of direction to the Respondents to maintain status quo in relation to the suit property. Obviously, irreparable

loss will be caused to the Appellant in case the interim relief is refused to the Appellant. Hence, there is a clear case for grant of interim relief, as stated above, in relation to the suit property.

4. The notice of motion therefore is allowed and the Respondents are directed to maintain status quo in relation to the suit property and shall not alienate the same nor shall induct any third party therein till the disposal of the suit or any order that may be passed in the suit in that regard.

5. The notice of motion is made absolute in above terms. There shall be no order as to costs.

(R.M.S. KHANDEPARKAR, J.)

(D.G. KARNIK, J.)